

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-09/08-397
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 Appeal of)

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division, assessing a Food Stamp overpayment for the months of May and June 2008. Petitioner claims that his part-time wages from a for-profit employer constituted work-study monies and should not be considered income under the Food Stamp regulations. The issue is whether petitioner's wages for May and June 2008 were exempt income. The decision is based upon testimony taken on October 2, 2008 and December 11, 2008.

1. The petitioner is a disabled individual who graduated from a local college after the 2008 spring semester. The petitioner majored in the hospitality program. He received financial assistance including work-study grants during his college tenure. Petitioner was responsible for finding his work-study placements; he found placements on-site at the college and off-campus. Petitioner believed that

all of his work placements were work-study placements. This case involves his work at a for-profit business during the spring 2008 semester.

2. On or about April 13, 2008, petitioner completed an application for recertification of Food Stamp eligibility. He stated he had no income from a job or training program. Petitioner did not include his work income because his past work-study monies had not been counted as income by the Department.

3. The Department sent petitioner a Notice dated August 26, 2008 informing petitioner that he had been overpaid \$173.00 in Food Stamp benefits for the months of May and June 2008 based on his wages. The Department considered the overpayment the result of inadvertent household error.

4. The petitioner filed a request for fair hearing on or about September 8, 2008. A fair hearing was convened on October 2, 2008.

5. At the fair hearing, L.D., eligibility benefits specialist, testified that the Department needed clarification if a student can do work-study off campus. She explained that they had difficulties obtaining information from the school. The hearing was continued to allow for further verification. Petitioner completed a new

authorization of information to the college on behalf of the Department.

6. The Department received information from the college on or about September 24, 2008 indicating a work-study award for both fall 2007 and spring 2008.

7. Prior to the November 3, 2008 telephone status conference, the Department sent a memo to the Board that Department employees were told that work-study could not be done at a for-profit business, and, as a result, petitioner's earnings were not exempt. The Board takes notice that federal work study may include employment through a private for-profit business. 34 C.F.R. § 675.20(a)(4).

8. A telephone status conference was held on November 3, 2008 and the hearing was reconvened on December 11, 2008.

9. D.S., Director of Financial Aid from petitioner's college, testified. D.S. clarified that off-campus placements with for-profit businesses can be work-study placements provided certain requirements are met such as experience relevant to a student's major. D.S. testified that she had reviewed petitioner's records and that petitioner did not receive work-study for the spring 2008 semester. She testified that petitioner had originally been granted work-study for both semesters. His file included an

on-campus placement for the period of September 2007 through April 22, 2008 (covering both semesters). She thought his for-profit placement may have been an internship.

10. Petitioner was genuinely surprised at D.S.'s testimony. He testified that he did not turn down work-study monies. Petitioner was in need of work-study as part of his financial aid. He started with an on-campus placement in September 2007. He went to a for-profit placement at the end of December 2007. He did not understand why his file did not have paperwork showing the change in his placement.

His for-profit placement (restaurant) included work relevant to his hospitality degree. Petitioner testified that the for-profit placement was work-study. He treated his wages as work-study monies by only using the funds for school related expenditures. He does not have paperwork from this period because his apartment building was destroyed in a fire. He testified that the local housing authority had treated this income as work-study. Petitioner's testimony is credible.

ORDER

The Department's decision is affirmed.

REASONS

The amount of Food Stamps a household receives is based upon a complex formula that is set out in Food Stamp Manual (FSM) § 273.9.

The Department has assessed an overpayment against the petitioner based on wages he received during May and June 2008. Petitioner contends that the wages are exempt because they were work-study monies.

Student financial aid funded through the Higher Education Act is not counted as income in the Food Stamp program. 20 U.S.C. § 1087uu. Student financial aid includes a range of programs including work-study. Food Stamp Manual (FSM) § 273.9c(3)(i). Before the financial aid can be excluded, two other requirements must be met. Petitioner meets the first prong because he was enrolled in a recognized postsecondary institution. FSM § 273.9c(3)(ii)(A).

The second prong at FSM § 273.9c(3)(ii)(B) states that financial aid must be:

used for or identified (earmarked) by the institution, school, program, or other grantor for the following allowable expenses:

1. Tuition,
2. Mandatory school fees...,
3. Books,
4. Supplies,
5. Transportation,
6. Miscellaneous personal expenses,

...

The form returned from the college (dated September 24, 2008) supports that the funds were earmarked. Petitioner testified that he used his wages for school-related expenses, not for personal expenses.

There is a discrepancy in the testimony from the college and from petitioner. The only written evidence from the college shows that petitioner was awarded work-study for both semesters during the 2007-2008 school year. However, D.S. testified that her review of the records indicated that petitioner refused work-study for the spring semester. D.S.'s conclusions are based on the entirety of the petitioner's financial aid file.

Petitioner consistently testified that his for-profit placement was work-study. Work-study was an integral part of his financial aid package; he treated his earnings as work-study. He did not understand why the college did not have the information about his change in placement. Petitioner testified that his earnings were treated as work-study by another entity.

Although petitioner treated these monies as work-study monies, the other evidence does not support a finding that the monies were work-study monies. There is no basis in the

regulations to consider these monies as constructive work-study monies.

Accordingly, the May and June 2008 earnings must be treated as income. The Department's decision to assess an overpayment is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4(D).

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